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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	MM Docket No. 96-197
Newspaper/Radio Cross-Ownership	)	
Waiver Policy	)	

COMMENTS OF THE MID-WEST FAMILY STATIONS

The Mid-West Family Stations[1/] ("Mid-West") hereby submits its comments on proposed revisions to the Commission's waiver policy for its newspaper/radio cross-ownership rule, contained in the Commission's Notice of Inquiry in the above-referenced docket.[2/] Mid-West urges the Commission to maintain its strong commitment to viewpoint diversity and economic competition in the mass media, and, toward this end, asks that the Commission adhere to its stringent waiver policy in the newspaper/radio cross-ownership context. As explained below, Mid-West believes that the Commission must recognize the influence and market power of monopoly daily newspapers, and should not facilitate any further increase in this influence

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1/ Mid-West is a group of related companies which operates 24 radio stations in seven midwestern radio markets. Mid-West has prided itself on integrating its local management into station ownership, so that the responsiveness of the licensee to local concerns is heightened. Thus, in each market, a different corporate entity holds the station licenses. While there are common owners of stock throughout the group, senior management in each local station is given an opportunity, and encouraged, to make an investment in their own stations, thereby giving them a direct stake in making their station truly responsive to their communities. By almost any objective measure, the Mid-West Family Stations are characterized by their strong commitment to covering local events, and becoming integral participants in their local communities.

2/ Newspaper/Radio Cross-Ownership Waiver Policy, Notice of Inquiry, MM Docket No. 96-197 (dated October 1, 1996) ("Notice"). The deadline for comments in this proceeding was extended to February 7, 1997 by Commission order on December 5, 1996.

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through the use of waiver criteria or an inappropriately flexible public interest test which would allow such dominant marketplace competitors to acquire radio station interests in their markets.

Discussion

I. In Order to Prevent Newspapers' Power and Influence in Local Media Markets from Becoming Too Great, The Commission Must Maintain a Stringent Waiver Policy

In applying its newspaper/broadcast cross-ownership rule, the Commission's primary focus should be the containment of newspapers' power and influence in local media markets. At the time of the rule's adoption in 1975, newspapers were a powerful presence in these markets, and they remain so today. As pointed out by the Commission, local newspapers captured 49% of local advertising expenditures in 1995, compared to 13.3% for radio stations.[3/] Moreover, as the Commission also recognizes, this 49% share is often captured by a single newspaper, while the average 13.3% radio share is usually divided among numerous radio stations.

In fact, on an individual basis, the average daily newspaper has experienced an increase in market power since 1975. Since that time, the number of English language daily newspapers has shrunk by approximately 11%, from 1,756 to approximately 1,556.[4/] For the most part, cities and towns have not lost their only daily paper; rather, this decrease stems from the demise of communities' second or third daily newspaper. In such instances, not only do the remaining newspapers have access to a greater portion of the local advertising pie, a majority have become local monopolies and now enjoy the market power which accompanies that status.

3/ Notice at 12.

4/ Notice at 7. During this period, the number of radio stations licensed has increased from 8,265 to 12,076. Id. This rise has not increased the number of independent media voices, however, given the degree of consolidation in the radio industry in recent years, largely resulting from changes in the local radio ownership rules.

These newspapers' strength in their local markets raises both diversity and competition issues. The prevalence of daily newspaper monopolies and the significance of their role in the dissemination of local news and information makes it critical that local broadcast entities be independently owned, with independent viewpoints. Mid-West believes that the loss of viewpoint diversity from a newspaper's permanent ownership of even one radio station would outweigh any potential public interest benefits in the vast majority of cases.

Mid-West also believes that liberalization of the Commission's newspaper/radio cross-ownership waiver policy would have significant anti-competitive consequences. Not only would a newspaper have access to financial resources sufficient to outbid other prospective purchasers of radio properties, a newspaper's monopoly status might also enable it to cross-subsidize the operations of its radio stations following their purchase. This cross-subsidization would allow a newspaper owner to sell advertising time at rates well below those of its competitors or use them as cross-promotional enticements to solidify the advertising base of the newspaper -- the dominant source of the newspaper company's advertising revenues. Such action might destabilize other radio stations in those market by driving down radio advertising prices, and thus driving down the return on the investment that could be expected for future radio purchases. Thus, the only potential buyer for subsequent sales of stations in markets where newspaper-radio combination is allowed may be that same newspaper. In this way, a more liberal waiver policy might help newspapers gain control over a substantial number of radio stations, further augmenting their influence in these local media markets.

Only now, after the liberalization of the local multiple ownership rules sanctioned by the 1996 Telecommunications Act, and the subsequent radio ownership consolidation, have radio companies had a sufficient base of advertising inventory and demographic reach to truly begin to compete with newspapers for local advertising dollars. Most radio companies are now learning how they can be more effective competitors to newspapers, to insure that radio gets a larger share of the local advertising pie. By advancing radio's future profitability, the future of quality local interest programming will also be advanced.

However, by allowing newspapers to acquire radio stations, the gains on which radio is now working may very well be stifled by newspaper-radio combinations. Mid-West wants desperately to avoid this scenario, and it therefore rejects the Notice's proposed liberalization. Mid-West believes instead that the Commission must maintain a stringent waiver policy for its newspaper/radio cross-ownership rules. The Commission has waived its newspaper/broadcast cross-ownership rules only twice since 1975, both times in the television context, and the Commission should respond to all future waiver requests with a similar approach.

II. In Order to Maintain a Stringent Waiver Standard, the Commission Should Reject the Use of Objective Criteria

The Notice asks whether the Commission should adopt "objective criteria" for evaluating waiver requests. Under the criteria proposed by the Commission, a transaction would initially be viewed as in the public interest if it occurred in a market of specified numerical rank or larger and if a specified number of independently owned voices would remain in that market following the transaction. The Commission suggested that it might use the "top 25/30 voice" waiver standard currently applied with respect to the one-to-a-market rule, or the "top 50/30 voice" standard which Congress has instructed the Commission to begin using in that context.[5]

In Mid-West's view, the use of such a standard would be entirely inappropriate in the newspaper/radio cross-ownership context. In particular, Mid-West believes that the number of

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[5] <u>Notice</u> at 8, n.36.

broadcast outlets in a local market is irrelevant; a daily newspaper is likely to enjoy a relatively stable level of influence and power in its local media market, and this influence is unlikely to vary according to the number of broadcast outlets available there. Equating the influence of a daily newspaper with that of a single daytime AM radio station simply makes no sense. Even the influence of a powerful FM station is unlikely to approach the influence of a daily paper. Because of the amount of broadcast competitors in any market, radio stations, by their very nature, target specific limited demographic groups of listeners, while the single newspapers in town influences the entire community. As stated above, any extension of newspaper influence into the broadcast realm is likely to have the unacceptable consequences of decreasing local media diversity and competition, and the continued existence of a certain number of independent broadcast voices in a given market simply will not offer a counterweight to such influence.

If the Commission is absolutely committed to relaxing its waiver standard through the use of some "bright line" test, the Commission should look instead to the market rank factor. This standard is preferable for several reasons. In Mid-West's experience, the influence of daily newspapers is particularly strong in medium-to-small sized cities. A "Top 25" or "Top 50" test would presumably leave the Commission's stringent waiver standard in place in lower ranked markets. Moreover, with daily newspaper monopolies less likely in the nation's largest cities, the influence of any individual newspaper is likely to be less in such markets. As a result, a radio station acquisition by a newspaper in those cities would not raise the extreme level of concern seen elsewhere. Finally, the use of a Top 25 or Top 50 standard would be simple administratively, saving both private and public resources -- applicants and their opponents could hardly dispute the plain contents of these annual market rankings.

In any event, wherever an applicant is able to satisfy such "objective" criteria, the

Commission should also demand the second, "special circumstances" showing described in its notice. As proposed, the Commission should require applicants to make a "separate affirmative determination" in individual cases that "the specified benefits" to the public would offset any reduction in diversity resulting from that transaction.

III. The Commission Should Apply the Waiver Criteria Outlined in its 1975 Order Even More Stringently Today

In its 1975 order on the newspaper/broadcast cross-interest rule, the Commission identified three specific scenarios in which it would consider waiving this restriction: 1) where a radio station owner demonstrated an inability to sell its station to a non-newspaper entity; 2) where a station owner showed that the only possible sale to a non-newspaper entity would be at an artificially depressed price; 3) where it was shown that the separate ownership and operation of the newspaper and the broadcast station could not be supported in the locality.[6] In its Notice, the Commission opens up these criteria for reevaluation, however, asking if there are "other objective criteria . . . that should warrant a waiver, such as saving a failing station or newspaper, reacquisition of a media property by a former owner so that the waiver would not truly be creating a new combination in the market, etc.?"[7]

While it is true that the Commission has never granted a waiver in the radio context on

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[6] Multiple Ownership of Standard, FM, and Television Broadcast Stations, Second Report and Order, 50 FCC 2d 1046, 1084-85 ("Second Report and Order"), recon., 53 FCC 2d 589 (1975) ("Recon. Order"), aff'd sub nom. Federal Communications Commission v. National Citizens Committee for Broadcasting, 436 U.S. 775 (1978).

[7] Notice at 11. Mid-West disagrees with the Commission's characterization of whether or not a station is "failing" as an "objective" criterion. Whether or not a city is ranked as one of the 25 largest radio markets in the country is clearly an objective question; a community is on that list, or it is not. In contrast, a radio station's financial condition is typically subject to varying interpretations. This element should be treated more like a "special circumstance" factor, akin to the balancing of the public interest benefits of a radio acquisition against the resulting loss of diversity.

any of these grounds, Mid-West believes that the Commission should take this opportunity to remove these factors from its waiver analysis altogether, or at least make clear that it will consider these factors only in the most extreme circumstances.

The Commission should not waive its Newspaper/Radio Cross-Ownership policy because a radio station owner looking to sell has been unable to find any non-newspaper buyer for its station. First, it is not clear that the Commission can distinguish between a situation in which a prospective seller's effort to find a non-newspaper buyer was bona fide, and one in which it was merely the case that the newspaper's purchase offer was sufficiently attractive to discourage that seller's search for an alternative buyer. Given this uncertainty, allowing a seller to turn to the local newspaper monopoly would provide an easy out, one which should not be permitted given the resulting harm to diversity and competition in that local media market. In addition, such waivers might discourage non-newspapers in other markets from aggressively pursuing the purchase of radio stations in those communities, given the likelihood of stiff competition from a local newspaper. Finally, Mid-West believes that the fact that a newspaper is reacquiring a radio station is irrelevant and should not play any role in the Commission's waiver analysis. The Commission must focus on a transaction's diversity and competition effects on the **current** marketplace, not compare the results of this purchase to a market structure which existed years earlier.

Mid-West recognizes that broadcast ownership by non-daily and non-English language newspapers does not raise the kind of diversity and competition issues found in the daily newspaper context. For this reason, Mid-West is amenable to a slightly relaxed waiver standard with respect to such applicants. In contrast, the effect of such variables as newspaper circulation or the power or class of the radio station on the relevant diversity and competition analyses are impossible to calculate with any precision, and Mid-West maintains that these factors should play no role in the Commission's waiver analysis.

Conclusion

Since the Commission enacted its newspaper/broadcast cross-ownership rule in 1975, daily newspapers have remained a powerful media presence, in fact the dominant presence in most markets. Daily newspaper monopolies have become more prevalent, and these newspapers earn almost half of all local advertising revenue. The proposed liberalization of the Commission's newspaper/radio cross-ownership waiver policy would further this trend by permitting newspaper companies to absorb large numbers of radio stations all over the country. Mid-West asks the Commission to rethink its approach, and to reaffirm its commitment to the preservation of independent local broadcast viewpoints. Accordingly, Mid-West urges the Commission to adhere to a stringent waiver policy in the newspaper/radio cross-ownership context.

Mid-West Family Stations

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